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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO / OAKLAND DIVISION

14 JASON ZAJONC, individually and on
behalf all others similarly situated,

15 Plaintiff,

16 v.

17 MORGAN STANLEY & CO. LLC,
18 f/k/a Morgan Stanley & Co. Incorporated,
MORGAN STANLEY SMITH BARNEY
19 LLC, and MORGAN STANLEY,

20 Defendants.

**COMPLAINT FOR VIOLATIONS OF
STATE WAGE AND HOUR LAWS**

CLASS ACTION

DEMAND FOR JURY TRIAL

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1 Plaintiff Jason Zajonc (“Plaintiff” or “Mr. Zajonc”) alleges, on behalf of himself
2 and a California class of those similarly situated, as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has original jurisdiction over this action under the Class Action
5 Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1) there are 100 or
6 more members in the proposed class; (2) at least some members of the proposed class have a
7 different citizenship from Defendant; and (3) the claims of the proposed class members exceed
8 \$5,000,000 in the aggregate.

9 2. This Court is empowered to issue a declaratory judgment pursuant to
10 28 U.S.C. §§ 2201 and 2202.

11 3. The United States District Court for the Northern District of California has
12 personal jurisdiction over Morgan Stanley & Co. LLC, Morgan Stanley Smith Barney LLC and
13 Morgan Stanley (collectively, “Morgan Stanley” or “Defendants”), because Defendants maintain
14 an office this District, do business in California and in this District, and because many of the acts
15 complained of and giving rise to the claims alleged occurred in and emanated from this District.

16 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
17 substantial part of the events giving rise to the claims occurred in this District.

18 5. Intradistrict assignment: Pursuant to N.D. Cal. Local Rule 3-2(c) and (d),
19 intradistrict assignment to the San Francisco or Oakland Division is proper because a substantial
20 part of the events that give rise to the claims asserted occurred in Marin County.

21 **SUMMARY OF CLAIMS**

22 6. Morgan Stanley is a financial services company that provides brokerage
23 and related products and services to millions of investors nationwide.

24 7. Morgan Stanley employs Financial Advisor Associates (“FAAs”) at branch
25 locations nationwide.

26 8. Morgan Stanley classifies its FAAs as non-exempt during an
27 approximately five- to six-month training, or “pre-production,” period.
28

1 9. During the pre-production training period, while they are classified as non-
2 exempt, FAAs' duties include the completion of the required FAA Training Program course
3 work, studying for and passing the Series 7 exam, studying for and passing the Series 66 exam,
4 studying for and passing the FAA Pre-Production Assessment exams, learning Defendants'
5 product and service offerings, research tools, policies, and procedures, including Defendants'
6 marketing protocols, client call and meeting guidelines, and networking tips, developing a
7 tailored business plan and schedule, attending meetings, completing all FAA Training Program
8 curriculum requirements, and attending national performance sessions.

9 10. During the pre-production training period, FAAs regularly worked
10 overtime both from the office and remotely for which they were not compensated.

11 11. To the best of his recollection, Plaintiff worked uncompensated overtime
12 during the vast majority or all of his work weeks; specifically, Plaintiff worked uncompensated
13 overtime the week prior to taking his Series 7 exam, among others.

14 12. Pursuant to a company-wide policy and practice, Morgan Stanley
15 uniformly failed to accurately track or record actual hours worked by FAAs during the pre-
16 production training period. Morgan Stanley furthered this wrongful policy by: (i) instructing its
17 FAAs not to track all hours they worked but instead, to record only their scheduled eight (8)
18 hours every day; (ii) instructing its FAAs not to record overtime hours worked; (iii) failing to
19 provide its FAAs with a method to accurately record the hours they actually worked; and (iv)
20 requiring FAAs to understate the number of hours they actually worked.

21 13. In willful disregard of state wage and hour law, Morgan Stanley has
22 refused to timely pay Plaintiff and all other similarly situated FAAs for all hours worked and has
23 failed to provide overtime premium pay. Moreover, Morgan Stanley has willfully failed to
24 provide mandatory meal and rest periods and furnish itemized wage statements.

25 14. Plaintiff brings this action, pursuant to Federal Rule of Civil Procedure 23
26 ("Rule 23"), on behalf of all persons who are and were employed by Morgan Stanley in
27 California, as FAAs and similarly situated current and former employees holding comparable
28 positions but different titles ("Class Members") at any time since December 19, 2010, through the

1 date of the final disposition of this action (“Class Period”) who (i) were not timely paid for all
 2 hours worked by them as well as unpaid overtime wages for hours worked above forty (40) in a
 3 workweek; (ii) were not provided with an off-duty meal period of at least thirty (30) minutes for
 4 every five hours worked; (iii) were not provided with two off-duty rest periods of at least ten (10)
 5 minutes for every four hours or major fraction thereof worked; (iv) were subject to Defendants’
 6 failure to maintain accurate and sufficient time records for FAAs; and (v) were subject to
 7 Defendants’ failure to provide accurate and itemized wage statements showing gross wages
 8 earned, total hours worked, net wages earned, and all applicable hourly rates in effect during each
 9 pay period and the corresponding number of hours worked at each hourly rate by the employee.

10 15. Morgan Stanley’s practices violate California Labor Code §§ 201-203, 218,
 11 218.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 2698-2699.5, *et seq.* and Wage
 12 Order No. 4-2001 (collectively, “California Wage and Hour Law”) and California Business &
 13 Professions Code § 17200 *et seq.* Plaintiff seeks declaratory relief; overtime compensation for all
 14 overtime work required, suffered, permitted, or engaged by Morgan Stanley; liquidated and/or
 15 other damages and penalties as permitted by applicable law; benefits recoverable under applicable
 16 law and interest; and attorneys’ fees and costs.

17 **THE PARTIES**

18 16. Plaintiff Jason Zajonc was employed by Morgan Stanley as an FAA from
 19 in or about June 2012 to October 2012 at Morgan Stanley’s branch location in San Rafael, CA.

20 17. Mr. Zajonc regularly worked more than forty (40) hours in a workweek for
 21 Morgan Stanley’s benefit during the pre-production training period. Pursuant to Morgan
 22 Stanley’s policy, pattern or practice, Mr. Zajonc was not paid proper compensation for all hours
 23 worked including overtime compensation for all hours worked over 40.

24 18. Throughout Mr. Zajonc’s time as an FAA, Morgan Stanley did not provide
 25 him with mandatory meal and rest periods and did not furnish itemized wage statements.

26 19. Morgan Stanley & Co. LLC, f/k/a Morgan Stanley & Co. Incorporated, is a
 27 Delaware limited liability company with its principal place of business in New York, New York.
 28 It is a wholly owned subsidiary of Defendant Morgan Stanley.

1 20. Morgan Stanley Smith Barney LLC is a Delaware limited liability
2 company with its principal place of business in New York, New York. It is a partially owned
3 subsidiary of Defendant Morgan Stanley.

4 21. Morgan Stanley is a Delaware bank holding company, registered with the
5 New York Stock Exchange, among other regulatory agencies and authorities. Morgan Stanley
6 has its principal place of business in New York, New York.

7 22. Morgan Stanley is a parent company of Defendants Morgan Stanley & Co.
8 LLC and Morgan Stanley Smith Barney LLC.

9 23. Each Defendant does business under the trade name or mark of “Morgan
10 Stanley.”

11 24. Each Defendant is a financial services company that provides brokerage
12 and related products and services to millions of investors nationwide.

13 25. Each Defendant employed Plaintiff and other Class Members, directly or
14 indirectly, jointly or severally, including, without limitation, directly or indirectly controlling and
15 directing the terms of employment and/or compensation of Plaintiff and other Class Members.

16 26. Each Defendant exercised control over the wages, hours or working
17 conditions of Plaintiff and other Class Members, or suffered or permitted to work, or engaged,
18 thereby creating a common law employment relationship, Plaintiff and other Class Members.

19 27. Defendants jointly employed Plaintiff and other Class Members.

20 **CLASS ACTION ALLEGATIONS**

21 28. Pursuant to Rule 23, Mr. Zajonc, as the Class Representative, brings claims
22 for relief for violation of California’s wage and hour, unfair competition, and private attorney
23 general laws as a class action, pursuant to Rule 23(a) and (b)(3), on behalf of all Class Members,
24 defined in paragraph 14.

25 29. The persons in the class identified above are so numerous that joinder of all
26 Class Members is impracticable. Although the Class Representative does not know the precise
27 number of such persons, the facts on which the calculation of that number can be based are
28

1 presently within the sole control of the Defendants and ascertainable. Upon information and
2 belief, there are at least 100 members of the class.

3 30. Defendants have acted or refused to act on grounds generally applicable to
4 the class, thereby making appropriate final injunctive relief or corresponding declaratory relief
5 with respect to the class as a whole.

6 31. There are questions of law and fact common to the class that predominate
7 over any questions solely affecting individual members of the class, including but not limited to:

8 a. whether Defendants have failed and/or refused to pay the Class
9 Representative and Class Members overtime pay for the hours worked in excess of forty (40)
10 hours per workweek and hours worked in excess of eight (8) per day within the meaning of the
11 California Wage and Hour Law;

12 b. whether Defendants failed to provide off-duty meal periods to the
13 Class Representative and Class Members in violation of California Wage and Hour Law;

14 c. whether Defendants failed to provide off-duty rest periods to the
15 Class Representative and Class Members in violation of California Wage and Hour Law;

16 d. whether Defendants failed to provide accurate itemized wage
17 statements to the Class Representative and Class Members in violation of California Wage and
18 Hour Law;

19 e. whether Defendants' conduct was "unlawful," "unfair," or
20 "fraudulent" under California Business & Professions Code § 17200, *et seq.*;

21 f. whether Defendants failed to comply with the record keeping
22 requirements of the California Wage and Hour Law;

23 g. the nature and extent of the class-wide injury and the appropriate
24 measure of damages for Class Members;

25 h. whether Defendants had a uniform policy and practice of failing to
26 accurately track or record actual hours worked by Class Members;

27 i. whether Defendants furthered their uniform policy and practice of
28 failing to accurately track or record actual hours worked by Class Members by: (i) instructing

1 Class Members not to track all hours they worked but instead to record only their scheduled eight
2 (8) hours per day; (ii) instructing Class Members not to record overtime hours worked; (iii)
3 failing to provide Class Members with a method to accurately record the hours they actually
4 worked; and (iv) requiring Class Members to under-state the number of hours they actually
5 worked;

6 j. whether Defendants' policy and practice of failing to accurately
7 track or record hours worked by Class Members was willful; and

8 k. whether Defendants can prove that their unlawful policies were
9 implemented in good faith.

10 32. The claims of the Class Representative are typical of the claims of the class
11 sought to be represented. The Class Representative and Class Members work or have worked for
12 Defendants and have been subjected to their policy, pattern or practice of failing to pay overtime
13 wages for hours worked in excess of forty (40) hours per week. Defendants acted and refused to
14 act on grounds generally applicable to the class, thereby making declaratory relief with respect to
15 the class appropriate.

16 33. The Class Representative will fairly and adequately represent and protect
17 the interests of the class.

18 34. The Class Representative has retained counsel competent and experienced
19 in complex class action and wage and hour litigation.

20 35. A class action is superior to other available methods for the fair and
21 efficient adjudication of the California Wage and Hour Law claims, where individual plaintiffs
22 may lack the financial resources to vigorously prosecute a lawsuit in court against corporate
23 defendants.

24 36. Class Members have been damaged and are entitled to recovery because of
25 Defendants' common and uniform policies, practices and procedures. Although the relative
26 damages suffered by individual Class Members are not *de minimus*, such damages are small
27 compared to the expense and burden of bringing individual cases.
28

37. Class treatment of the claims is superior because it will obviate the need for duplicative litigation that may result in inconsistent judgments about Defendants' practices.

FIRST CAUSE OF ACTION
California Wage and Hour Law: Unpaid Wages
On Behalf of the Class Representative and the Class
Against All Defendants

38. The Class Representative realleges and incorporates by reference the preceding paragraphs as if they were set forth again herein.

39. Defendants have engaged in a widespread policy, pattern or practice of violating the California Wage and Hour Law, as detailed in this Class Action Complaint.

40. At all times relevant, the Class Representative and other Class Members have been employees and Defendants have been employers within the meaning of the California Wage and Hour Law. The Class Representative and Class Members are covered by the California Wage and Hour Law.

41. Class Members all perform or performed the same primary duties, responsibilities and activities, and are all subject to Defendants' common policy and practice, implemented throughout the State of California, of failing to credit and pay them proper overtime compensation, in violation of the California Wage and Hour Law.

42. Each Defendant employed the Class Representative and Class Members as an employer or a joint employer, as further alleged herein.

43. Defendants failed to pay the Class Representative and other Class Members wages to which they are entitled under the California Wage and Hour Law, including California Labor Code §§ 510, 558, and 1194, *et seq.* and Wage Order No. 4-2001 (codified at Cal. Code Regs. tit. 8, § 11040). Defendants failed to pay the Class Representative and Class Members for overtime at a wage rate of one and one-half times their regular rate of pay in weeks they worked more than forty (40) hours and for days they worked more than eight (8) hours.

44. California Labor Code § 510 and the applicable Wage Order require that an employer compensate all work performed by an employee in excess of eight (8) hours per

1 workday and forty (40) hours per workweek, at one and one-half times the employee's regular
2 rate of pay.

3 45. California Labor Code § 1194 states that any employee receiving less than
4 the legal overtime compensation applicable is entitled to recover in a civil action the unpaid
5 balance of the full amount of his overtime compensation, including interest thereon, reasonable
6 attorneys' fees, and costs of suit.

7 46. California Labor Code § 558 states that an employer who violates § 510 or
8 the related Wage Order is subject to a civil penalty of fifty dollars (\$50) for each underpaid
9 employee for each pay period for which the employee was underpaid plus an amount sufficient to
10 recover underpaid wages and, for each subsequent violation, one hundred dollars (\$100) for each
11 underpaid employee for each pay period for which the employee was underpaid plus an amount
12 sufficient to recover underpaid wages.

13 47. Defendants' violations of the California Wage and Hour Law, as described
14 in this Complaint, have been willful and intentional.

15 48. Due to Defendants' violations of the California Wage and Hour Law, the
16 Class Representative and Class Members are entitled to recover from Defendants, jointly or
17 severally, the relief requested herein. As a direct and proximate result of Defendants' unlawful
18 conduct, as set forth herein, the Class Representative and Class Members have sustained
19 damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an
20 amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to
21 statute and other applicable law.

22 49. The Class Representative, on behalf of himself and Class Members, also
23 requests further relief as described below.

24 **SECOND CAUSE OF ACTION**
25 **California Wage and Hour Law: Failure to Provide**
26 **Mandated Meal Periods On Behalf of the Class Representative and**
the Class Against All Defendants

27 50. The Class Representative realleges and incorporates by reference the
28 preceding paragraphs as if they were set forth again herein.

1 51. California Labor Code § 512(a) states in a pertinent part: “[A]n employer
2 may not employ an employee for a work period of more than five hours per day without
3 providing the employee with a meal period of not less than 30 minutes. An employer may not
4 employ an employee for a work period of more than 10 hours per day without providing the
5 employee with a second meal period of not less than 30 minutes”

6 52. Wage Order No. 4-2001 states in pertinent part, “No employer shall
7 employ any person for a work period of more than five (5) hours without a meal period of not less
8 than 30 minutes If an employer fails to provide an employee a meal period in accordance
9 with the applicable provision of this order, the employer shall pay the employee one (1) hour of
10 pay at the employee’s regular rate of compensation for each workday that the meal period is not
11 provided.” Cal. Code Regs. tit. 8, § 11040, subd. 11(A) & (B). California Labor Code § 226.7(b)
12 explains that no employer shall “require an employee to work during a meal or rest . . . period
13 mandated by an applicable . . . order of the Industrial Welfare Commission.”

14 53. Since at least four (4) years prior to the filing of this action and continuing
15 until the present, Defendants failed to provide the Class Representative and Class Members meal
16 periods as required by California Labor Code §§ 226.7 and 512 and Wage Order No. 4-2001.

17 54. As a result of Defendants’ willful and unlawful failure to provide the Class
18 Representative and Class Members with mandated meal periods, the Class Representative and
19 Class Members are entitled to recover one (1) hour of pay at their regular rate of compensation
20 for each workday that a meal period was not provided, pursuant to California Labor Code § 227.7
21 and Wage Order No. 4-2001, § 11(B). The Class Representative and Class Members are also
22 entitled to reasonable attorneys’ fees and costs, under California Code of Civil Procedure §
23 1021.5.

24 55. The Class Representative, on behalf of himself and Class Members, also
25 requests further relief as described below.

26 **THIRD CAUSE OF ACTION**
27 **California Wage and Hour Law: Failure to Provide**
28 **Mandated Rest Periods on Behalf of the Class Representative and**
 the Class Against All Defendants

1 56. The Class Representative realleges and incorporates by reference the
2 preceding paragraphs as if they were set forth again herein.

3 57. Wage Order No. 4-2001 states in pertinent part, “Every employer shall
4 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
5 the middle of each work period. The authorized rest period time shall be based on the total hours
6 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
7 thereof. . . . If any employer fails to provide an employee a rest period in accordance with the
8 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
9 employee’s regular rate of compensation for each workday that the rest period is not provided.”
10 Cal. Code Regs. tit. 8, § 11040, subd. 12(A) & (B). California Labor Code § 226.7(b) explains
11 that no employer shall “require an employee to work during a meal or rest . . . period mandated
12 by an applicable . . . order of the Industrial Welfare Commission.”

13 58. Since at least four (4) years prior to the filing of this action until the
14 present, Defendants failed to provide the Class Representative and Class Members rest periods as
15 required by California Labor Code §§ 226.7 and Wage Order No. 4-2001.

16 59. As a result Defendants’ willful and unlawful failure to provide the Class
17 Representative and Class Members with mandated rest periods, the Class Representative and
18 Class Members are entitled to recover one (1) hour of pay at their regular rate of compensation
19 for each workday that a rest was not provided, pursuant to California Labor Code § 226.7 and
20 Wage Order No. 4-2001, § 12(B). The Class Representative and Class Members are also entitled
21 to reasonable attorneys’ fees and costs, under California Code of Civil Procedure § 1021.5.

22 60. The Class Representative, on behalf of himself and Class Members, also
23 requests further relief as described below.

24 **FOURTH CAUSE OF ACTION**
25 **California Wage and Hour Law: Failure to Furnish Accurate**
26 **Itemized Wage Statements on Behalf of the Class Representative**
 and the Class Against All Defendants

27 61. The Class Representative realleges and incorporates by reference the
28 preceding paragraphs as if they were set forth again herein.

1 62. California Labor Code § 226(a) and Wage Order No. 4-2001, § 7, provides,
2 in relevant part, that every employer must furnish each employee with an itemized wage
3 statement that shows the total number of hours worked each pay period, gross wages, net wages,
4 all deductions, all applicable hourly rates of pay, the name and address of the legal entity that is
5 the employer, and other information. California Labor Code § 1174(d) likewise requires
6 employers to maintain records of hours worked daily and wages paid to employees.

7 63. During the period four (4) years prior to the filing of the this Complaint
8 until the present, Defendants knowingly and intentionally failed to furnish the Class
9 Representative and Class Members, upon each payment of compensation, itemized wage
10 statements accurately showing, at minimum: gross wages earned, total hours worked, net wages
11 earned, and all applicable hourly rates in effect during pay period and the corresponding numbers
12 of hours worked at each hourly rate by the employee. Defendants also willfully failed to maintain
13 records of hours worked by the Class Representative and Class Members as required under
14 California Labor Code § 1174(d).

15 64. During all the relevant times, the Class Representative and Class Members
16 were injured by these failures because, among other things, they were not provided with
17 compliant wage statements, and they were confused about whether they were paid properly
18 and/or they were misinformed about how many total hours they worked in each pay period.

19 65. The Class Representative and Class Members are entitled to injunctive
20 relief to ensure Defendants' compliance with California Labor Code §§ 226(a) and 1174(d).

21 66. The Class Representative and Class Members are also entitled to the
22 amount provided under California Labor Code §§ 226(e) and 1174.5, including the greater of all
23 actual damages suffered or fifty (\$50) dollars for the initial pay period in which a violation
24 occurred and one-hundred (\$100) dollars for each subsequent pay period.

25 67. The Class Representative and Class Members are also entitled to an award
26 of costs and reasonable attorneys' fees under California Labor Code § 226(h).

27 68. The Class Representative, on behalf of himself and Class Members, also
28 requests further relief as described below.

FIFTH CAUSE OF ACTION

**California Wage Payment Provisions: Failure to Timely
Pay Wages On Behalf of the Class Representative and
the Class Against All Defendants**

69. The Class Representative realleges and incorporates by reference the preceding paragraphs as if they were set forth again herein.

70. California Labor Code §§ 201 and 202 requires employers to pay their employees all wages due within the time specified by law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employee must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30) days of wages.

71. The Class Representative and all Class Members who ceased employment with Defendants are entitled to unpaid compensation, but to date have not received such compensation.

72. More than thirty (30) days have passed since the Class Representative and certain Class Members left Defendants' employ.

73. As a consequence of Defendants' willful conduct in not paying compensation for all hours worked, the Class Representative and Class Members whose employment ended during the class period are entitled to thirty (30) days' wages under California Labor Code § 203, together with interest thereon and attorneys' fees and costs.

74. The Class Representative, on behalf of himself, Class Members, and the general public, also requests further relief as described below.

SIXTH CAUSE OF ACTION

**California Labor Code §§ 2698-2699.5: PAGA Claims on
Behalf of the Class Representative, the Class, and the
General Public Against All Defendants**

75. The Class Representative realleges and incorporates by reference the preceding paragraphs as if they were set forth again herein.

76. Under the California Private Attorneys General Act ("PAGA") of 2006, California Labor Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself or herself

1 and other current or former employees as well as the general public, may bring a representative
 2 action as a private attorney general to recover penalties for an employer's violations of the
 3 California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other
 4 relief available under the California Labor Code, and must be allocated 75% to California's Labor
 5 and Workforce Development Agency and 25% to the aggrieved employee, pursuant to California
 6 Labor Code § 2699.

7 77. Pursuant to California Labor Code § 1198, Defendants' failure to pay
 8 proper compensation to the Class Representative and Class Members, failure to provide them
 9 with meal and rest breaks, failure to keep and furnish them with records of hours worked, and
 10 failure to pay them all wages due immediately upon discharge and within the time required by
 11 law after their employment ended are unlawful and constitute violations of the California Labor
 12 Code, each actionable under PAGA.

13 78. The Class Representative alleges, on behalf of himself and the class, as
 14 well as the general public, that Defendants have violated the following provisions of the
 15 California Labor Code and the following provisions of California Wage Orders that are actionable
 16 through the California Labor Code and PAGA, as previously alleged herein: Cal. Wage Order No.
 17 4; Cal. Labor Code §§ 510, 558, & 1194, Cal. Labor Code. §§ 226.7 & 512, Cal. Labor Code §§
 18 226, 1174, & 1174.5, and Cal. Labor Code §§ 201, 202, & 203. Each of these violations entitles
 19 the Class Representative, as a private attorney general, to recover the applicable statutory civil
 20 penalties on his own behalf, on behalf of all aggrieved employees, and on behalf of the general
 21 public.

22 79. California Labor Code § 2699(a), which is part of PAGA, provides in
 23 pertinent part:

24 Notwithstanding any other provision of law, any provision of this code that
 25 provides for a civil penalty to be assessed and collected by the Labor and
 26 Workforce Development Agency or any of its departments, divisions,
 27 commissions, boards, agencies, or employees, for a violation of this code, may, as
 28 an alternative, be recovered through a civil action brought by an aggrieved
 employee on behalf of himself or herself and other current or former employees
 pursuant to the procedures specified in § 2699.3.

1 80. California Labor Code § 2699(f), which is part of PAGA, provides in
2 pertinent part:

3 For all provisions of this code except those for which a civil penalty is specifically
4 provided, there is established a civil penalty for a violation of these provisions, as
5 follows: . . . (2) If, at the time of the alleged violation, the person employs one or
6 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
7 employee per pay period for the initial violation and two hundred dollars (\$200)
8 for each aggrieved employee per pay period for each subsequent violation.

9 81. The Class Representative is entitled to civil penalties, to be paid by
10 Defendants and allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for
11 Defendants' violations of the California Labor Code and IWC Wage Orders for which violations
12 a civil penalty is already specifically provided by law. Further, the Class Representative is
13 entitled to civil penalties, to be paid by Defendants and allocated as PAGA requires, pursuant to
14 California Labor Code § 2699(f) for Defendants' violations of the California Labor Code and
15 IWC Wage Orders for which violations a civil penalty is not already specifically provided.

16 82. On December 19, 2014, the Class Representative provided written notice
17 by certified mail to the California Labor & Workforce Development Agency ("LWDA") and to
18 Defendants of the legal claims and theories of this case contemporaneous with the filing of the
19 Complaint in this action.

20 83. Under PAGA, the Class Representative and the State of California are
21 entitled to recover the maximum civil penalties permitted by law for the violations of the
22 California Labor Code and Wage Order No. 4 that are alleged in this Complaint.

23 84. The Class Representative, on behalf of himself and Class Members, also
24 requests further relief as described below.

25 **SEVENTH CAUSE OF ACTION**
26 **California Business and Professions Code: Unfair Competition Law**
27 **Violations On Behalf of the Class Representative and the Class**
28 **Against All Defendants**

85. The Class Representative realleges and incorporates by reference the
preceding paragraphs as if they were set forth again herein.

1 D. Appropriate equitable and injunctive relief to remedy Defendants' violations of the
2 California Wage and Hour Law and the California Business and Professions Code including, but
3 not necessarily limited to, an order enjoining Defendants from continuing their unlawful
4 practices;

5 E. An award of damages (including but not limited to unpaid wages and unpaid
6 overtime wages, as applicable), liquidated damages, appropriate statutory penalties, the
7 employer's share of FICA, FUTA, state unemployment insurance and any other required
8 employment taxes and restitution to be paid by Defendants according to proof;
9

10 F. Pre-Judgment interest;

11 G. A service award to the Class Representative(s) as compensation for the time, effort,
12 expense, risk, and opportunity costs incurred in pursuit of these representative claims on behalf of
13 others, and as an incentive to others to ensure robust enforcement of rights protecting workers;
14

15 H. Attorneys' fees and costs of this action, including expert fees; and

16 I. Such other relief as this Court deems just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury trial on all causes of action and claims with respect
19 to which he has a right to jury trial.
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Respectfully submitted,

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